



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 12, 1992

Mr. Terrence S. Welch
Vial, Hamilton, Koch & Knox
1717 Main Street, Suite 4400
Dallas, Texas 75201

OR92-596

Dear Mr. Welch:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17171.

You have received a request for information relating to a police officer who was the subject of an internal affairs investigation of the police department of the City of Cockrell Hill (the "city"). You advise us that some of the requested information has been made available to the requestor, specifically, the information submitted to us for review as Exhibit 4. You claim, however, that various documents generated during the course of the internal affairs investigation, a copy of the police officer's tape recording of the incident at issue here, and tape recordings of the police officer's interview and administrative warning and pre-termination hearing are excepted from required public disclosure by sections 3(a)(1), 3(a)(3), and 3(a)(8) of the Open Records Act.

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 3(a)(8) may be invoked by any proper custodian of the information which relates to the information. Open Records Decision Nos. 474 (1987); 372 (1983); *see also* Attorney General Opinion MW-575 (1982) (non-law enforcement agency may claim section 3(a)(8) where there is a reasonable probability of prosecution).

You advise us that the city has released information to the Federal Bureau of Investigation (FBI) with respect to criminal allegations that the police officer violated federal civil rights laws. *See* 18 U.S.C. §§ 241-46 (providing criminal penalties for civil rights violations). You advise us that the federal criminal investigation is on-going. *See* Open Records Decision Nos. 562 (1990) at 10-11; 340

(1982) (both holding that information relating to on-going federal criminal investigation may be withheld under section 3(a)(8)). Because the information for which you claim the section 3(a)(8) exception relates to the pending FBI investigation, we conclude that it may be withheld from required public disclosure under section 3(a)(8) of the Open Records Act. As we resolve this matter under section 3(a)(8), we need not address the applicability of sections 3(a)(1) and 3(a)(3) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-596.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GCK/lmm

Ref.: ID# 17171

cc: Mr. Kenny Kirby
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